

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

Re: *Docket to Establish Generic Performance*)
Measurements, Benchmarks and)
Enforcement Mechanisms for BellSouth)
Telecommunications, Inc.)

Docket No. 01-00193

CLEC RESPONSE TO BELL SOUTH'S SECOND PETITION FOR STAY

The CLEC Coalition¹ submits the following response to the Second Petition for Stay filed by BellSouth Telecommunications, Inc. ("BellSouth") in the above-captioned proceeding. Based on BellSouth's representations that it is in the process of implementing the performance measures ordered by the Tennessee Regulatory Authority ("TRA") and that the company can implement all but three measures within the time frames ordered by the Authority, the Coalition does not oppose granting a stay for ninety (90) days solely in regard to the three measures discussed in BellSouth's Petition in order to give BellSouth additional time to implement those measures.

The Tennessee Regulatory Authority ("TRA") issued a final Order in this docket on May 14, 2002. Agreed to by all three Directors, the Order reflected the culmination of more than two years of work by the Authority to develop a comprehensive plan to determine whether or not BellSouth is providing unbundled network elements (UNEs) to competing, local exchange carriers ("CLECs"), in a non-discriminatory manner, as required by state and federal law. Therefore, to monitor BellSouth's compliance and to deter the company from

¹ For purposes of this response, the Coalition members include Access Integrated Network, Inc., Birch Telecom, Inc., MCI WorldCom, Inc., AT&T Communications of the South Central States, Inc., and DEICA Communications, Inc. d/b/a Covad Communications Company.

anticompetitive conduct, every state in the region has either adopted — or is in the process of adopting — a system of performance measures and enforcement penalties.

Many states in the BellSouth region have elected to copy the plan adopted by the Georgia Public Service Commission either on an interim or permanent basis.² Tennessee, North Carolina and Florida, however, while borrowing much from the Georgia plan, have gone further and adopted plans which are more detailed and provide for monitoring and enforcement "at a more granular level."³ Because of the comprehensive nature of the Tennessee plan, the Coalition believes that the Tennessee plan may well become a model for use by other states around the country.

Following the issuance of the TRA's Final Order, on May 14, BellSouth filed a Petition for a Stay and a Motion to Reconsider. The Authority granted the Petition for a Stay, pending action on the Motion to Reconsider. In a second Order, issued June 28, 2002, the Authority made a number of changes in the Tennessee plan as requested by BellSouth. The Authority also modified its timetable for implementation of the plan, giving BellSouth additional time to implement various performance measures.

On July 8, 2002, BellSouth filed yet another Petition for Stay. The second Petition said that the TRA had ordered BellSouth to implement twenty performance measures "within ten days." BellSouth contends that it can implement seventeen of those measures within that time period but that three of the measures require additional time. Therefore, BellSouth

² Tennessee, North Carolina and Florida each established generic Performance Measurement dockets in which to conduct more comprehensive dialogue regarding state-specific requirements for performance measurements and remedies.

³ See Order on Reconsideration, June 28, 2002 at p. 34, discussing the differences and similarities between the Tennessee and Georgia plans.

"seeks a stay regarding only those three measures." Petition at p. 1, footnote 1, emphasis in original. BellSouth also states that it is in the process of complying with the rest of the TRA's Order and will continue to do so unless the Order is later reversed by the agency or a reviewing court. Id.

The Coalition has reviewed BellSouth's request concerning the three measurements which, the company says, cannot be implemented within ten days. The Coalition's subject matter experts do not dispute BellSouth's contention that, as regard to those three measures, BellSouth will need to make modifications which will require more than ten days to complete.

The TRA's Order on Reconsideration stated that BellSouth should be given ninety (90) days to implement measures "that require modification for state specific reporting." Order, at 39. Consistent with that ruling, the Coalition does not oppose granting BellSouth a stay for ninety (90) days regarding only those three measures. By the time the stay ends, BellSouth should have those measures in place. Granting this stay should in no way prolong the complete implementation of the entire Tennessee Order given that the work on these three (3) measures should be done in parallel with measures previously allotted ninety (90) days and six (6) months for implementation.

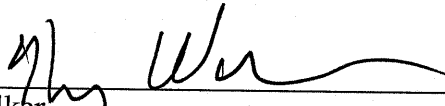
In not opposing BellSouth's request, the Coalition does not concede that BellSouth has met, or even attempted to meet, the four criteria listed in the TRA's rules concerning a request for a stay. See TRA Rule 1220-1-2-19. BellSouth's petition addresses only one of those criteria. Even BellSouth seems to acknowledge that their request for a stay is somewhat out of the ordinary but that the company is requesting the stay "out of an abundance of caution." Petition, at 6. Nevertheless, the Coalition believes that, given the immense amount of time and resources that the TRA, the Staff, and the parties have expended on this project during the

last two years, as well as BellSouth's assurance that it is now in the process of implementing the TRA's plan, giving BellSouth additional time only on the three measures listed in the Stay Petition seems a reasonable accommodation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via facsimile or hand delivery, to the following on this the 18th day of July, 2002.

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